

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

RICHARD COSTANZO,

Defendant.

8:10CR146

ORDER

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

RICHARD COSTANZO,

Defendant.

8:10CR425

ORDER

This matter is before the court in each of these two cases on defendant Richard Costanza's motion for relief pursuant to 28 U.S.C. § 2255. Filing No. 73 in case 8:10CR425; Filing No. 334 in case 8:10CR146. Under the Rules Governing Section 2255 Proceedings for the United States District Courts ("2255 Rules"), the court must perform an initial review of the defendant's § 2255 motion. See 28 U.S.C. § 2255, Rule 4(b). The rules provide that unless "it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court," the court must order the United States Attorney to respond to the motion. *Id.*

The defendant entered a plea of guilty to Counts I, III, IV, V, VI, VIII and IX of 8:10CR146 of a superseding indictment charging him with use of interstate commerce

to promote prostitution; and in 8:10CR425, to Count I charging him with attempt to corruptly persuade a victim with the intent to prevent testimony at trial. He took no direct appeal from either of these cases. In his § 2255 motion, the defendant alleges that he received ineffective assistance of counsel in connection with his guilty plea and sentencing and for counsel's failure to take an appeal.

On initial review, the court finds that "it does not plainly appear that the defendant is entitled to no relief," and that the government should be required to answer. On receipt of the government's answer, the court will determine (a) whether to order the parties to submit briefs on the merits, so that the defendant's claims may be resolved on the basis of the record and briefs, or (b) whether an evidentiary hearing is required. See Rule 8(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts.

THEREFORE, IT IS ORDERED:

1. On initial review, the court finds that summary dismissal is not appropriate.
2. The United States shall file an answer to the defendant's § 2255 motion within 21 days of the date of this order.

DATED this 29th day of January, 2013.

BY THE COURT:

s/Joseph F. Bataillon
United States District Judge